

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID J., an Individual,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security, et al.,

Defendants.

Case No.: 2:22-04941-MCS (ADS)

ORDER DISMISSING CASE FOR
FAILURE TO PROSECUTE AND
COMPLY WITH COURT ORDERS

I. INTRODUCTION

Pro se Plaintiff David J.¹ (“Plaintiff”) filed this civil lawsuit seeking review of a decision of the Commissioner of Social Security denying Plaintiff’s application for disability benefits. Plaintiff filed his Complaint on July 18, 2022. Since that date,

¹ Plaintiff’s name has been partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 Plaintiff has been given several opportunities to move forward with his lawsuit and has
 2 continuously failed to do so. As such, this case is dismissed in its entirety for failure to
 3 prosecute and comply with Court orders pursuant to Federal Rule of Civil Procedure
 4 41(b).

5 **II. PROCEDURAL HISTORY**

6 Plaintiff filed his Complaint against Andrew Saul on July 18, 2022.
 7 (Docket “Dkt.” No. 1.) The Court denied Plaintiff’s initial *In Forma Pauperis* (“IFP”)
 8 request and ordered Plaintiff to file an amended complaint to establish subject matter
 9 jurisdiction. (Dkt. No. 4.) In response, Plaintiff filed a First Amended Complaint
 10 against Defendant Kilolo Kijakazi, Acting Commissioner of the Social Security
 11 Administration (“Defendant”) on August 8, 2022. (Dkt. No. 5.) On August 12, 2022 the
 12 Court issued an Order to Show Cause as to why this case should not be dismissed for
 13 failure to state a claim, as the First Amended Complaint failed to cure the deficiencies
 14 regarding subject matter jurisdiction. (Dkt. No. 6.) Plaintiff did not respond to the
 15 August 12, 2022 Order to Show Cause. On October 26, 2022, the Court, on its own
 16 motion, vacated its initial order denying Plaintiff’s IFP application, and granted Plaintiff
 17 IFP status. (Dkt. No. 7.)

18 The Court then issued a Case Management Order (“CMO”) in this case.
 19 (Dkt. No. 9.) The CMO required Plaintiff to file a proper proof of service by
 20 November 25, 2022. (*Id.* at 2.) Plaintiff did not do so. On January 31, 2023, the Court
 21 issued an Order to Show Cause for Failure to Prosecute requiring Plaintiff to explain
 22 why this case should not be dismissed for failure to prosecute. (Dkt. No. 10.) Plaintiff
 23 was ordered to respond by no later than February 14, 2023. Finally, Plaintiff was
 24 advised:

1 Failure to timely file a response to this OSC with the Court, as directed
 2 above, may result in this action being dismissed for failure to prosecute
 3 and obey Court orders pursuant to Federal Rule of Civil Procedure
 41(b).

4 (Id. at 2.) Plaintiff has failed to file any response to the January 31, 2023 Order.

5 **III. DISMISSAL UNDER RULE 41(b)**

6 The Court's Order to Show Cause expressly cautioned Plaintiff that failure to
 7 respond would result in a recommendation that the action be dismissed under Federal
 8 Rule of Civil Procedure 41(b). (Dkt. No. 10.) Plaintiff did not respond to the Order. The
 9 failure to comply with the CMO and the failure to respond to two Orders to Show Cause
 10 reflect a lack of prosecution of the case. See Link v. Wabash R.R., 370 U.S. 626, 629–30
 11 (1962); see also Fed. R. Civ. P. 41(b). Plaintiff's failure to respond also demonstrates a
 12 failure to comply with Court orders.

13 In Carey v. King, 856 F.2d 1439 (9th Cir. 1988), the Ninth Circuit cited the
 14 following factors as relevant to the Court's determination of whether to dismiss an
 15 action for failure to prosecute: "(1) the public's interest in expeditious resolution of
 16 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
 17 defendants; (4) the public policy favoring disposition of cases on their merits, and
 18 (5) the availability of less drastic sanctions." Id. at 1440.

19 Upon consideration of the five Carey factors, the Court finds that Plaintiff's
 20 failure to prosecute this case and to comply with the Court's orders warrant dismissal.
 21 The first two Carey factors—the public's interest in expeditiously resolving this litigation
 22 and the Court's interest in managing the docket—weigh in favor of dismissal. The Court
 23 cannot hold this case in abeyance indefinitely awaiting Plaintiff's response to the Court's
 24 directive and to file a proof of service of having properly served the summons and

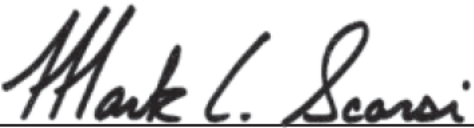
1 Complaint on the government. Additionally, Plaintiff has not taken any action in this
2 case since August 8, 2022 and has ignored three separate Court orders. The third factor,
3 risk of prejudice to Defendant, also weighs in favor of dismissal since a presumption of
4 injury arises from the occurrence of unreasonable delay in prosecuting an action.
5 Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, the
6 public policy favoring disposition of cases on their merits, is greatly outweighed by the
7 factors in favor of dismissal. Finally, Plaintiff has already been cautioned of the
8 consequences of failure to prosecute and ordered to show cause why the action should
9 not be dismissed. No sanction lesser than dismissal is feasible here. Thus, dismissal of
10 this action is warranted under Federal Rule of Civil Procedure 41(b).

11 **IV. CONCLUSION**

12 IT IS THEREFORE ORDERED that this action is dismissed pursuant to Federal
13 Rule of Civil Procedure 41(b).

14
15 IT IS SO ORDERED.

16
17 Dated: February 21, 2023

18 
19 THE HONORABLE MARK C. SCARSI
20 United States District Judge

21 Presented by:

22
23 /s/ Autumn D. Spaeth
24 THE HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge